

ORIGINAL

DOUG #1

- - - - -X  
:  
UNITED STATES OF AMERICA,  
:  
:  
Plaintiff,  
:  
:  
- v. -  
:  
:  
RIVER YORK STRATFORD L.L.C. and  
:  
GLENWOOD MANAGEMENT CORPORATION,  
:  
:  
Defendants.  
:  
:  
- - - - -X

00 Civ.

JURY TRIAL DEMANDED

*[Signature]*

## 1

2. As more fully alleged herein, the defendants River York Stratford L.L.C. ("River York") and Glenwood Management Corporation ("Glenwood") (collectively, "defendants") violated the Act by, inter alia, refusing to provide Bihari with a reasonable accommodation in an alleged "no pet" policy that would permit Bihari to remain in her apartment with an emotional assistance pet.

3. The defendants' conduct violates the Act and should be declared unlawful and permanently enjoined, and appropriate monetary damages should be awarded.

#### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over the subject matter of this action pursuant to section 812(o) of the Act, 42 U.S.C. § 3612(o), and pursuant to 28 U.S.C. §§ 1331 and 1345.

5. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 812(o) of the Act, 42 U.S.C. § 3612(o).

6. Venue is proper under 28 U.S.C. § 1391(b) and (c). The defendants conduct business in this district, and the events giving rise to this complaint occurred in this district.

#### **THE PARTIES**

7. The plaintiff is the United States of America.

8. Defendant River York is the owner and landlord of an apartment building located within the Southern District of New York at 1385 York Avenue, New York, NY 10021, in which Bihari resides. The apartment units in this building are "dwellings" within the meaning of 42 U.S.C. § 3602(b).

9. Defendant Glenwood is a corporation doing business within the Southern District of New York, located at 1200 Union Turnpike, New Hyde Park, NY 11040. Glenwood is the management company for the apartment building located at 1385 York Avenue, New York, NY 10021, in which Bihari resides.

#### **FACTS**

10. Bihari is a person with a "handicap" within the meaning of 42 U.S.C. § 3602(h). Bihari was diagnosed with and has been treated for chronic, major depressive disorder and mood disorder since 1977. In addition, she has been diagnosed with borderline personality disorder, and has a fear of loss associated with second generation Holocaust Survivor Syndrome. She has been treated, as needed, by several psychiatrists, psychologists, and psychotherapists since 1977. She has been medicated, as needed, with antidepressants or other psychotropic medications since 1977. She is currently being treated by a psychiatrist and a certified social worker, and is taking the antidepressant medication netazodone (Serzone).

11. Bihari currently owns and lives with an emotional assistance pet, a female Shih Tzu named Robi, who weighs approximately six pounds. She acquired Robi in October 1997. Robi plays an important role in Bihari's therapy and treatment, by allowing Bihari to bond with and form an attachment to her, and by stabilizing and regulating Bihari's mental state and behavior. In addition, because of her borderline personality disorder and fears of abandonment, Bihari's current treating professionals believe

that the loss of Robi would likely precipitate a depressive episode (and depressive symptoms, including anxiety, panic attacks, poor concentration, and insomnia) and a crisis state. Moreover, Bihari's current treating professionals believe that the loss of Robi could possibly trigger psychosis, or render Bihari suicidal.

12. Bihari first acquired an emotional assistance pet, a Lhasa Apso female dog named Nikki, in 1977. She acquired Nikki on the advice of a psychiatrist treating her for mental and emotional illness at the time. Nikki weighed approximately thirteen pounds.

13. In 1982, Bihari began to reside in the apartment building located at 1385 York Avenue. The building is comprised of approximately 285 apartment units.

14. Bihari first moved into Apartment 18J. The apartment was subject to the Rent Stabilization Law of 1969, Local L. 1969, No. 16, as amended (the "Rent Stabilization Law").

15. Bihari moved into Apartment 18J with her emotional assistance pet, Nikki, and lived with her there.

16. In 1983 or 1984, Bihari moved within the apartment building at 1385 York Avenue to Apartment 34C, an apartment unit larger than the one she had previously occupied. Bihari also lived with Nikki in Apartment 34C.

17. In September 1987, due to water and other problems in Apartment 34C, Bihari again moved within the apartment building to Apartment 32G. This apartment is also subject to the Rent Stabilization Law. Bihari signed a two-year lease for Apartment

32G, which by its terms could be renewed by written renewal. The lease has been renewed several times. In or about September 1997, the lease was renewed for the two-year period September 1997 through September 1999; the monthly rent for this period was \$2634.53. In or about September 1999, the lease was renewed for the one-year period September 1999 through September 2000; the monthly rent for this period is \$2687.22.

18. When she signed the lease for Apartment 32G in 1987, Bihari also signed a Rider, which stated that "[T]he tenant has received notice and fully understands that new tenants in the above-mentioned building are not allowed to keep, harbor, or house any dogs, cats or pets of any kind ("Pets") in any apartment in said building, irrespective of what the situation may be with any other tenant or tenants currently in the building; THEREFORE, the tenant(s) hereby undertakes and agrees to abide by the above prohibition during the entire time the tenant shall occupy the above-captioned apartment. The tenant further agrees that any violation of the above prohibition against Pets shall constitute a default under the lease." At the time she signed this Rider, Bihari was not a new tenant in the building.

19. Bihari lived with Nikki in Apartment 32G from 1987 until 1995, during which time defendants did not take any actions against her regarding their alleged "no pet" policy.

20. In or about 1994, Nikki became ill. She died in or about January 1995.

21. During Nikki's illness and after her death, Bihari

experienced a major depressive episode. Among other things, she suffered from anxiety, panic attacks, poor concentration, insomnia, and difficulty in completing everyday tasks. Bihari did not seek to replace Nikki immediately, because she feared bonding with and then losing another emotional assistance pet.

22. In October 1997, Bihari acquired Robi, a new emotional assistance pet.

23. On or about April 3, 1998, River York sent a letter to Bihari alleging that she was violating the terms of her lease by harboring a dog in her apartment, and demanding that she remove the dog.

24. On or about April 27, 1998, River York served on Bihari a notice to cure, demanding that she cure the alleged breach of her lease by May 8, 1998.

25. On or about May 11, 1998, River York served on Bihari a notice of termination of her lease, effective May 19, 1998.

26. On or about May 20, 1998, in New York City Civil Court, Housing Part, River York commenced proceedings to evict Bihari from her apartment, charging that she was harboring a dog in violation of the "no pet" rider to her lease. Because the rent for Bihari's apartment exceeds \$2000, defendants would be permitted under the Rent Stabilization Law to "deregulate" Bihari's apartment if she vacates it or is evicted, and to charge market-based rent.

27. In her answer to the eviction complaint, Bihari alleged that she was disabled, and sought as a reasonable

accommodation for her disability an exception to the building's alleged "no pet" policy.

28. On information and belief, defendants knowingly permit approximately 19 tenants in the apartment building located at 1385 York Avenue to live with dogs. On information and belief, many of the dogs that are permitted to remain in the apartment building exceed the size and weight of Bihari's six-pound Shih Tsu.

29. On or about October 13, 1998, Bihari submitted documents to the United States Department of Housing and Urban Development ("HUD"), alleging that defendants were discriminating against her on the basis of mental disability by refusing to permit her to remain in her apartment with an emotional assistance pet.

30. On or about November 6, 1998, River York and Bihari stipulated to remove the eviction proceedings from the housing court's calendar, pending the earlier of a determination by HUD concerning Bihari's discrimination claim or a period of six months.

31. On or about November 30, 1998, Bihari filed a timely complaint of housing discrimination on the basis of mental disability with HUD, pursuant to section 810(a) of the Act, 42 U.S.C. § 3610(a). Bihari alleged, inter alia, that the defendants violated the Act in refusing to accommodate her handicap by permitting her to remain in her apartment with an emotional assistance pet.

32. Pursuant to the requirements of 42 U.S.C. § 3610(a) and (b), the Secretary of HUD (the "Secretary") commenced an investigation of Bihari's complaints.

33. On or about July 13, 1999, Bihari advised HUD that Glenwood was charging her, in addition to her monthly rent, the cost of its legal expenses in connection with the eviction proceedings against her. As of July 1, 1999, Glenwood had charged Bihari \$6,618.50 in legal fees.

34. On or about December 1, 1999, River York moved to restore the eviction proceedings against Bihari to the housing court's calendar. In or about January 2000, Bihari cross-moved to further stay the eviction proceedings pending the outcome of her HUD complaint.

35. In or about January 2000, Glenwood sent Bihari a bill for \$1980.50 in legal fees.

36. HUD completed its investigation, attempted conciliation without success, and prepared a final investigative report. On or about February 9, 2000, based on information gathered during HUD's investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that discriminatory housing practices had occurred.

37. Accordingly, on or about February 14, 2000, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging defendants with engaging in discriminatory housing practices and retaliation in violation of 42 U.S.C. §§ 3604 and 3617, and 24 C.F.R. § 100.400.

38. On or about February 29, 2000, Judge Bruce Scheckowitz of the New York City Civil Court, Housing Part, stayed River York's eviction proceedings against Bihari, pending a



determination concerning HUD's charge of discrimination.

39. Defendants have taken action against Bihari in retaliation for her having filed a HUD complaint, including, inter alia, charging her their legal expenses for the eviction proceedings, seeking to restore the eviction proceedings to the court's calendar prior to resolution of the HUD complaint, and failing to provide her with various services afforded to other tenants.

40. Defendants' efforts to evict Bihari and their refusal to make a reasonable accommodation in their alleged "no pet" policy have caused Bihari to experience depressive symptoms, including panic attacks and increased anxiety. In addition, as a result of defendants' actions, Bihari has required an increase in her dosage of antidepressant medication and additional psychiatric and psychoanalytic therapy.

41. On or about March 9, 2000, defendants elected to proceed in this Court, rather than administratively, pursuant to 42 U.S.C. § 3612(a).

42. By letter dated March 29, 2000, the Secretary authorized the Attorney General to commence a civil action on Bihari's behalf pursuant to 42 U.S.C. § 3612(o).

#### CLAIMS FOR RELIEF

43. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

44. Defendants, in refusing to permit Bihari to reside in her apartment with an emotional assistance pet, have

discriminated against Bihari in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap, in violation of 42 U.S.C. § 3604(f)(2)(A).

45. Defendants, in refusing to permit Bihari to reside in her apartment with an emotional assistance pet, have discriminated against Bihari by their refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations are necessary to afford Bihari an equal opportunity to use and enjoy her dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

46. Defendants have unlawfully retaliated against Bihari because she made a complaint, or assisted or participated in a proceeding, under the Act, in violation of 42 U.S.C. § 3617 and 24 C.F.R. § 100.400.

47. Bihari is an aggrieved person, as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of the defendants' conduct described herein.

48. The discriminatory actions of defendants were intentional, willful, and taken in disregard of Bihari's rights.

#### RELIEF REQUESTED

WHEREFORE, plaintiff United States of America prays that the Court enter judgment:

A. Declaring that the discriminatory and retaliatory practices of the defendants as set forth above violate the Act;

B. Permanently enjoining the defendants, their agents,

employees and successors, and all other person in active concert or participation with any of them, from engaging in discriminatory or retaliatory housing practices based on handicap and ensuring the full enjoyment of the rights granted by the Act. More specifically, the United States prays that the Court enter an order that permanently enjoins the defendants from refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford handicapped persons equal opportunity to use and enjoy dwellings;

C. Awarding such damages as will compensate Bihari fully for the damages caused by the defendants' discriminatory and retaliatory conduct, pursuant to 42 U.S.C. § 3612(o)(3) and 42 U.S.C. § 3613(c);

D. Awarding punitive damages to Bihari pursuant to 42 U.S.C. § 3612(o)(3) and 42 U.S.C. § 3613(c); and

E. Granting such further relief as the Court may deem just.

Dated: New York, New York  
April 7, 2000

MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
Attorney for Plaintiff  
United States of America

By: Meredith E. Kotler  
MEREDITH E. KOTLER (MK-9580)  
Assistant United States Attorney  
100 Church Street, 19th Floor  
New York, New York 10007  
Tel.: (212) 637-2724